There is undoubtedly evidence of hardship on the side of the plaintiff because of the overcrowded and difficult conditions under which she is staying (though in her own house) with her sons, their wives and children. But there is very strong evidence of hardship on the side of the defendant, consisting of his lack of means to get other accommodation and the hardship to his invalid spinster sister in the event of a possession order being made, since there was a real risk of at least her being rendered homeless. This aspect of the hardship to the defendant and his sister was, as I have already observed, wrongly disregarded by the learned magistrate. Again, the fact that the plaintiff was much sounder financially than the defendant was a matter upon which the judgment was silent.

I recognize that it is only in exceptional cases that an appellate court will interfere on a question of greater hardship (per Lord Parker in *Manaton* v. *Edwards and Anor.*[22] at p. 1258 *ante* penultimate paragraph). When, however, as in this case, for the reasons stated, the trial court has proceeded on a mistaken basis of the law (per Lord Greene in *Coplans* v. *King*[9]) or has misdirected itself on the facts or the evidence (per Lord Denning in *Piper* v. *Harvey*[23] at p. 446) by, for example, omitting some point of substance or by taking into account something which should not have been considered or by drawing the wrong inferences (per Scott L.J. in *Chandler* v. *Strevett*[8] at p. 165G, H) or by making findings which are based upon false premises (per Ong J. in *Ponnudurai* v. *Jayatileka*[24]), then it would be proper for the appellate court to interfere.

In the result, the inevitable conclusion to which I am driven is that this appeal must be allowed and the possession order set aside. The plaintiff will have to pay to the defendant the costs of the proceedings both here and in the court below. There will also be an order for refund of the deposit paid by the defendant as security for the costs of the appeal.

*Appeal allowed.*

Solicitors: *Shamsuriah & Balasundram; Khaw Ewe Seng & Co.*

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## MOHD. NOOR BIN OTHMAN & ORS. v. MOHD. YUSOF JAAFAR & ORS.

**[O.C.J. (Harun J.) 25-28 January, 2-4 February & 13 April 1988]**

**[Kuala Lumpur – Civil Suit No. R8-22-28-1988]**

*Societies – Political society – Application to declare party elections null and void – Unapproved branches established by party – Effect of – Both branches and registered society deemed to be unlawful societies – Application dismissed – Societies Act 1966, ss. 6, 12, 41, 42-47.*

United Malays National Organization (UMNO) was a political party registered under the Societies Ordinance 1966 and is also the dominant party in the coalition government in Malaysia. UMNO was organized in a pyramid structure with the general assembly at the apex, a state liaison body at state level, the divisions at parliamentary constituency level and branches at the base. Delegates from the general assembly are from the divisions and delegates from the division are in turn elected from members of the respective branches.

In the present case, the 12 plaintiffs who were members of UMNO sought a declaration that the party elections held on 24 April 1987 were null and void and for consequential orders to hold fresh elections. It was not disputed that there were 30 unapproved branches (unapproved by Registrar of Societies) in four divisions which held their annual general meetings and elected delegates or sent observers to the division conferences which in turn elected delegates to the general assembly on 24 April 1987. There were also other irregularities in the UMNO elections. The defendants contended, *inter alia*, that only the unapproved branches should be declared unlawful and not UMNO itself.

**Held**, dismissing the plaintiff's claim: (1) section 12(3) read with section 41(c) of the Societies Act 1966 clearly applies to the facts of this case. From the moment the first unapproved branch was established, not only the unapproved branch so established was an unlawful society but also UMNO itself;

(2) in the present case, up to the date of the trial the unapproved branches remained in existence as unapproved branches and therefore UMNO, its divisions and branches were deemed by the Act to be unlawful societies. The provisions of sections 12(3) and 41(c) are clear and unambiguous and it will do violence to the language of the statute if only the unapproved branches were declared by the Act to be unlawful societies but not the parent body;

(3) as UMNO was an unlawful society at the material time, persons who took part in the elections in 1987 at branch, division and the general assembly levels committed an offence (section 43 of the Act) and therefore the elections were null and void and the office-bearers elected at all levels were not office-bearers at all. The entire series of elections were a nullity all the way. The office-bearers elected at the 37th general assembly in 1984 continue to be the lawful office-bearers of UMNO;

(4) since no approval was sought from the Registrar of Societies in respect of some of the unapproved branches and since up to the time of the trial, UMNO was still an unlawful society, the plaintiffs as members of UMNO cannot acquire any right which is founded upon that which

was unlawful. The court will therefore not lend its aid to the reliefs sought by the plaintiffs.

(5) although the plaintiffs have lost their case, they have succeeded in obtaining a declaration that the 1987 UMNO elections were null and void and the most appropriate order would be to make no order as to costs.

[*Editorial Note:* Hearing in chambers was held on 25 January and in open court on 26-28 January & 2-4 February. At the conclusion of the hearing on 4 February, his Lordship delivered an oral judgment. His Lordship's written judgment was later delivered on 13 April 1988.]

*Cases referred to:*

(1) *Vethanayagam* v. *Karuppiah & Ors.* [1968] 1 M.L.J. 283 (distd).

(2) *Vethanayagam* v. *Karuppiah & Anor.* [1969] 1 M.L.J. 146 (distd).

HIGH COURT.

*Y.M. Raja Abdul Aziz Addruse* (*Mohd. Shafee Abdullah* and *Christina Kow Sow Chow (Ms)* with him) for the plaintiffs.

*G. Sri Ram* (*Zaki Tun Azmi, Juliana Solomon (Ms)* and *W.W. Cheong* with him) for all the defendants except the 4th and 7th defendants.

*H.S. Lim* for the 4th defendant.

*Ghandi K. Singam* for the 7th defendant.

*Cur. Adv. Vult.*

**Harun J.** (delivering the grounds of judgment):

*Introduction*

In this action, the 11 plaintiffs who are members of the United Malays National Organization (UMNO), a political party, are seeking to declare the party elections held on 24 April 1987 null and void and for consequential orders to hold fresh elections. UMNO has been the dominant party of coalition governments continuously to the present day since the first general elections in 1955.

In eight successive governments since Merdeka (Independence), the Prime Minister and the Deputy Prime Minister have been chosen from the leaders of UMNO, *viz.* the UMNO President and Deputy President respectively. The UMNO party elections are therefore not only of public interest but of national importance as well.

The 1987 party elections attracted more than the usual interest because for the first time there was a serious challenge to the top leadership of UMNO resulting in the President and Deputy President being elected by very narrow margins as follows:

President

| | | |
|---|---|---|
| Datuk Seri (Dr.) Mahathir | : | 761 |
| Tengku Razaleigh Hamzah | : | 718 |
| Margin | : | 43 |

Deputy President

| | | |
|---|---|---|
| En. Ghafar Baba | : | 739 |
| Datuk Musa Hitam | : | 699 |
| Margin | : | 40 |

*Organization of UMNO*

UMNO is organized in a pyramid structure with the general assembly at the apex, the state liaison body at state level, the divisions at parliamentary constituency level, and branches at the base. Any number of branches may be established within a parliamentary constituency which are grouped under a single division for each parliamentary constituency. A member may belong to only one branch at any time but he may transfer his membership from one branch to another. There are more than 8,000 branches; 132 divisions; and more than one million ordinary members of UMNO.

Parallel to this structure are the Youth (Pemuda) and Women (Wanita) wings. The day-to-day management at each level consists of:

*Branches* – A branch committee of 20 members including the branch heads of Pemuda and Wanita.

*Divisions* – A division committee of 28 members including the division heads of Pemuda and Wanita.

*State liaison body* – (a) chairman; (b) deputy chairman; (c) secretary; (d) treasurer; (e) information chief; (f) heads of divisions who are not holders of posts (a) to (e); and (g) two representatives of Pemuda and two representatives of Wanita including the state heads of each wing.

*General assembly – The Supreme Council* – (a) the president; (b) the deputy president; (c) five vice-presidents including the national heads of Pemuda and Wanita; (d) the secretary-general; (e) the treasurer; (f) information chief; (g) 25 members elected by the general assembly; and (h) seven members appointed by the president. The president, deputy president, three vice-presidents and 25 council members are elected by the general assembly once every three years.

In January each year, the branches hold their annual general meetings and elect delegates to the

division conference on the basis of one delegate for every 50 members subject to a maximum of five delegates from each branch provided the members of the branch have paid their annual subscriptions on or before 31 December of the previous year.

In April each year, the divisions hold their annual general meetings and elect delegates to the general assembly on the basis of one delegate for every 500 members subject to a maximum of ten delegates from each division including the heads of Pemuda and Wanita provided the members of the division have paid their annual subscriptions on or before 31 December of the previous year. In addition, the chairman of each division is also a delegate and if he is a member of the Supreme Council he may appoint an alternate delegate from amongst the members of the division committee.

In June each year, UMNO holds its general assembly. The Supreme Council may, however, either advance the date of the general assembly (which it did in 1987 to April) or postpone it to a later date but not longer than 18 months after the previous general assembly. If the general assembly is held earlier than June, then the division conference is also advanced to not later than 30 days before the general assembly. Those eligible to attend the general assembly and vote are:

(a) members of the Supreme Council;

(b) the chairman and delegates elected at the division conferences;

(c) five delegates from Pemuda and five delegates from Wanita elected at their respective national level meetings held immediately prior to the general assembly.

*Agreed facts*

The trial commenced with a statement of agreed facts and no witnesses were called to give oral evidence. The agreed facts may be summarized briefly as follows:

(a) Six of the plaintiffs are heads of branches; the 11th plaintiff, head of Pemuda of Beruas division; and the others ordinary members of UMNO.

(b) The 8th defendant is the secretary-general of UMNO and the other defendants are secretaries of divisions.

(c) In 1987, the branches held their annual general meetings in January; the divisions held their annual general meetings in February and March; and the general assembly was held on 24 April 1987.

(d) There were 30 unapproved branches in four divisions which held their annual general meetings and elected delegates or sent observers to the division conferences which in turn elected delegates to the general assembly on 24 April 1987.

(e) Complaints by the plaintiffs regarding the validity of the division conferences attended and participated by delegates from the unapproved branches and other irregularities were made to the secretary-general before the general assembly but were not dealt with by him in accordance with the provisions of the UMNO constitution. Indeed in the case of the Pasir Puteh division following complaints that members from unapproved branches had attended and voted at the division conference, the secretary of the division issued a notice on 27 March 1987 declaring the meetings of the Pemuda, Wanita and the division itself as invalid and required the said meetings be held again. The Supreme Council, however, at its meeting on 28 March 1987 held that the meetings held on 19, 20, 21 February 1987 were valid and directed the Pasir Puteh division to cancel the proposed reconvened meeting on 11 and 12 April 1987. As a result, the head of Pasir Puteh division and ten other delegates elected at the division conference on 21 February 1987 attended the general assembly.

(f) Other irregularities included underaged wanita who do not qualify for membership and even non-members attended the Wanita meeting; an overaged pemuda was elected as a Pemuda delegate; and the disqualification of 22 branches out of 25 branches of the Nibong Tebal division in the election of delegates to the general assembly.

*The Societies Act 1966*

The Societies Act 1966 (the Act) provides that a society of seven or more persons, whatever its nature or object, is to be registered under the Act. By definition, a society includes a political party such as UMNO. Section 12 provides:

"(1) No registered society shall establish a branch without the prior approval of the Registrar;

(2) –

(3) Where a registered society establishes a branch without the prior approval of the Registrar such registered society and the branch so established shall be deemed to be unlawful societies.

(4) The provisions of this Act other than sections 6(1), 7 and 8 shall apply to any branch of a registered society approved under this section as though such branch were a society registered, as the society of which it is a branch, under the provisions of this Act.

(5) For the purpose of this section, a branch of a registered society includes any society which is in any way subordinate to another society.

(6) Where an approval to establish a branch has been given, such branch shall be established within three months thereof unless the Registrar has granted an extension of time."

Section 6(2) and (3) read:

"(2) Until a local society is registered under this Act, no person shall, without a written permission of the Registrar, organize or take part in any activity of or on behalf of the society, except only to apply to, or correspond with the Registrar.

(3) Any person committing a breach of sub-section (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit, and where the breach is a continuing one to a fine not exceeding two hundred ringgit for every day after the first day during which the breach continues."

Section 41 provides:

"For the purposes of this Act any of the following societies shall be an unlawful society, that is to say –

(a) –

(b) –

(c) a society which establishes a branch without the prior approval of the Registrar in contravention of section 12 and the branch so established;

(d) – "

UMNO is a registered society under section 7 of the Act. The divisions and branches are established as approved branches under section 12.

Sections 42 to 47 prescribe offences in respect of unlawful societies. In particular, section 43 makes it an offence for any person to attend a meeting of an unlawful society.

*Case for the plaintiffs*

The case for the plaintiffs simply is that because of the presence of delegates from the unapproved branches and their participation at the divisional conferences, the divisional conference itself is rendered invalid and all decisions taken at such conference ineffective, null and void. The plaintiffs say that because the elections held at the divisional conference, which had delegates from unapproved branches participating, were null and void, consequently the delegates sent by these divisions to the general assembly were not entitled to attend the general assembly and the presence of such delegates at the general assembly and their participation in the voting at the election of the general assembly contravened the fundamental requirements of any democratic institution, *i.e.* to conduct an election fairly. That is to say, persons not entitled to vote should not be allowed to vote and those entitled to vote should not be precluded from voting. Finally, as the results of the voting were very close, it is a material factor of the April elections that the votes of delegates from only two divisions are sufficient to alter the results.

*Reliefs claimed*

The plaintiffs accordingly seek the following reliefs:

(a) a declaration that the divisional delegates meetings for elections of delegates to the general assembly of the following divisions were unconstitutional and *ultra vires* the UMNO Malaysia constitution and therefore null and void and of no effect:

(i) Tanjung (Penang)
(ii) Jelutong (Penang)
(iii) Nibong Tebal (Penang)
(iv) Pasir Puteh (Kelantan)
(v) Machang (Kelantan)
(vi) Rantau Panjang (Kelantan)
(vii) Pekan (Pahang Darulmakmur);

(b) a declaration that all office-bearers/delegates elected at these divisional delegates meetings as described in (a) above were illegal and unconstitutional and all subsequent acts done by them in the purported exercise of their powers were also null and void and of no effect;

(c) a declaration that the whole election of the office-bearers at the general assembly was unconstitutional, illegal and therefore null and void and of no effect;

(d) a consequential declaration that the previous elected office-bearers of UMNO Malaysia at the 37th UMNO Malaysia general assembly still exists in law with all the powers subscribed to them until expiration of their full term or upon a fresh UMNO general assembly and election being taken on a date to be fixed in accordance with the UMNO constitution;

(e) an order that UMNO Malaysia and the 8th defendant do within one (1) month of this order make arrangements for fresh delegate elections at the following affected divisions of UMNO Malaysia:

(i) Tanjung (Penang)
(ii) Jelutong (Penang)
(iii) Nibong Tebal (Penang)
(iv) Pasir Puteh (Kelantan)
(v) Machang (Kelantan)
(vi) Rantau Panjang (Kelantan)
(vii) Pekan (Pahang Darulmakmur);

(f) an order that UMNO Malaysia and the 8th defendant do make arrangements for a fresh

UMNO general assembly and elections to be held after compliance with (e) above and in any case not later than three months from the date of this order;

(g) a declaration that the plaintiffs are entitled to obtain forthwith (upon payment of prescribed fees) from the 9th defendant the list of all UMNO Malaysia registered branches from the following UMNO Malaysia divisions:

(i) Tanjung (Penang)
(ii) Jelutong (Penang)
(iii) Nibong Tebal (Penang)
(iv) Pasir Puteh (Kelantan)
(v) Machang (Kelantan)
(vi) Rantau Panjang (Kelantan)
(vii) Pekan (Pahang Darulmakmur);

(h) costs;

(i) further or other relief as this honourable court deems fit.

*Agreed issues*

The parties agreed that the following issues be tried:

(1) What is the effect in law of branches of UMNO having been established in the following divisions, without the prior approval of the Registrar of Societies contrary to section 12 of the Societies Act 1966:

(a) Pasir Puteh
(b) Machang
(c) Rantau Panjang
(d) Pekan

specifically upon:

(a) the elections conducted at the meeting of each of the said branches in and for the year 1987;

(b) the elections conducted at the meeting of each of the aforesaid divisions in and for the year 1987;

(c) the elections conducted at the general assembly held on 24 April 1987?

(2) If each of the aforesaid elections was unlawful and/or a nullity, then are the plaintiffs or any of them entitled to the several declarations and injunctions sought by them in their writ and in particular (but without prejudice to the generality of this issue) by reference to:

(a) the *locus standi* of the plaintiffs to obtain the relief;

(b) the availability of alternative remedies;

(c) the doctrine of unclean hands;

(d) the failure to exhaust domestic remedies;

(e) the presence of illegality, if any;

(f) the requirement that the plaintiffs should obtain benefit by the relief claimed?

(3) On a proper construction of the UMNO constitution, is any of the plaintiffs a member of UMNO at the date of hearing of this suit?

(4) (a) Does the UMNO constitution constitute a contract?

(b) If it does, then between whom?

(5) On a proper construction of the UMNO constitution, do the plaintiffs have any interest enforceable by declaration and/or injunction?

*Findings*

Section 12(3) read with section 41(c) clearly applies to the facts of this case. I find that from the moment the first unapproved branch was established not only the unapproved branch so established is an unlawful society but also UMNO itself. The defendants cannot plead ignorance because under the UMNO constitution no branch can be established without the approval of at least two-thirds of the members of the division committee. Also under the UMNO constitution, no branch delegates can attend the division conference if their subscriptions had not been paid up. In all instances in the present case, when the attendance of delegates from unapproved branches were challenged, the respective chairmen were content to hold that as their branches have paid up their subscriptions, they were entitled to attend the division conference. In the case of the Pasir Puteh division, the validity of the division conference was considered by the Supreme Council which held that the division conference, although attended by delegates from unapproved branches, was valid and proceeded to order the cancellation of a reconvened conference which was intended to preclude the attendance of delegates from the unapproved branches. Moreover, UMNO has been the dominant political party, and must be aware of the provisions of the Societies Act which was introduced in Parliament in 1966 embodying these stringent provisions which Parliament in its wisdom considered fit to enact to ensure strict compliance with the law which were non-existent in the Societies Ordinance 1949 which it repealed and replaced by the 1966 Act.

It was urged that only the unapproved branches be declared unlawful and not UMNO itself.

*Vethanayagam* v. *Karuppiah & Ors.*[1] and *Vethanayagam* v. *Karuppiah & Anor.*[2] were cited as authorities for severance. That case involved an unapproved branch of the Malaysian Indian Congress (MIC) where an interim injunction was sought to restrain the members of the branch committee from acting further. In that case, the court considered section 12(3) and held that the unapproved branch was an unlawful society but did not declare that the MIC itself was an unlawful society. The facts of that case can be distinguished from the present in that by the time the matter came up for hearing on the second day the branch had undergone a metamorphosis, the Registrar of Societies having approved the branch in the meantime thus making it a lawful society. By the time the Federal Court heard the appeal, fresh elections had been held and therefore the case had become academic.

In the instant case, up to the date of the trial the unapproved branches remained in existence as unapproved branches and therefore UMNO, its divisions and branches are deemed by the Act to be unlawful societies. The provisions of sections 12(3) and 41(c) are clear and unambiguous and it will do violence to the language of the statute if only the unapproved branches are declared by the Act to be unlawful societies but the parent body is not.

In my judgment, as UMNO was an unlawful society at the material time, persons who took part in the elections in 1987 at branch, division and the general assembly levels committed an offence (section 43 of the Act) and therefore the elections were null and void and the office-bearers elected at all levels were not office-bearers at all. The entire series of elections were a nullity all the way. It follows that the office-bearers elected at the 37th general assembly in 1984 continue to be the lawful office-bearers of UMNO.

*Remedies*

The obvious remedy is for the office-bearers elected in 1984 to hold fresh elections at all levels after obtaining the necessary approvals in respect of the unapproved branches from the Registrar of Societies. But as stated earlier, even up to the time of the trial, except for three branches in the Rantau Panjang division, no attempt was made to obtain the Registrar's approval. It follows that UMNO is still an unlawful society. That being so, the plaintiffs as members of UMNO cannot acquire any right which is founded upon that which is unlawful. The court will therefore not lend its aid to the reliefs sought by the plaintiffs.

Having said that, I do not think it is necessary to deal with the other issues and I accordingly dismissed the plaintiffs' claim.

*Costs*

In the circumstances of this case although the plaintiffs have lost their case they have succeeded in obtaining a declaration that the 1987 UMNO elections were null and void and the most appropriate order would be to make no order as to costs.

*Obiter*

Before parting with this case, I would observe that the Societies Act was originally intended to eradicate secret societies. It still does. In the past, social and sports clubs were exempt from its provisions. But the legislation is, in my view, not suitable to regulate political parties. An attempt was made to legislate specifically for political parties by the addition of Part IA in the Societies Act 1966 in 1981 but it was repealed in 1983. Perhaps the time has arrived for Parliament to legislate a separate Act for political parties as it has done for trade unions and co-operative societies. Be that as it may, it seems to me that the root cause of the party's problems is the fact that any number of branches may be established within a constituency and local leaders are prone to establish branches on the eve of elections to ensure being voted into office. There is only one UMNO at national level; only one UMNO division at parliamentary constituency level and there should be only one UMNO branch for each polling district.

*Order accordingly.*

Solicitors: *Shafee & Co.; Rashid & Lee; H.S. Lim; Teo & Partners; Zuki Gandhi & Amin.*